



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**APR 25 2014**

Cleta Mitchell  
Foley & Lardner LLP  
3000 K Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20007

RE: MUR 6634  
Forbes for Congress  
and Cheryl L. Freauff as treasurer

Dear Ms. Mitchell:

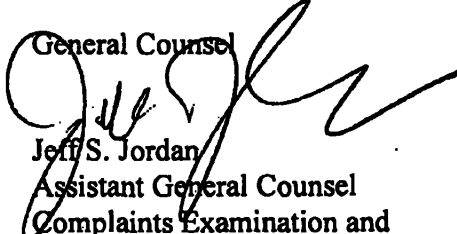
On September 6, 2012, the Federal Election Commission notified your clients, Forbes for Congress and Cheryl L. Freauff in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 17, 2014, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Forbes for Congress and Cheryl L. Freauff in her official capacity as treasurer violated the Act or Commission regulations with respect to the allegations in this matter. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Donald E. Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

General Counsel

BY:   
Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosure:  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS: Forbes for Congress**

**MUR 6634**

**and Cheryl L. Freauhoff as treasurer**

**Republican Party of Virginia, Inc.**

**and Robert S. Fitzsimmonds III as treasurer**

**Various 4th District of Virginia Republican**

**Party Committees**

**I. INTRODUCTION**

This matter was generated by a complaint filed by Roberta M. "Bonnie" Girard, on August 29, 2012, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Forbes for Congress and Cheryl L. Freauhoff in her official capacity as treasurer, the Republican Party of Virginia, Inc. and Robert S. Fitzsimmonds III in his official capacity as treasurer, and various 4th District of Virginia Republican Party Committees. It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

In this matter, the Complainant, Roberta M. "Bonnie" Girard, alleges that Forbes for Congress and Cheryl L. Freauhoff in her official capacity as treasurer (the "Committee")<sup>1</sup>, the Republican Party of Virginia, Inc. and Robert S. Fitzsimmonds III in his official capacity as treasurer ("RPV"), and various 4th District of Virginia Republican Party Committees,

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<sup>1</sup> Forbes for Congress is the principal campaign committee of Congressman J. Randy Forbes.

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1 (collectively, the “Respondents”), violated 2 U.S.C. § 434(b) by failing to disclose in-kind  
2 contributions and expenditures related to a phone system allegedly purchased by the Committee  
3 and donated to RPV and its local committees for use prior to Virginia’s 2012 primary election.  
4 Compl. at 1.

5 Specifically, the Complainant alleges that the Committee disclosed two disbursements in  
6 April 2012 to Innovative Campaign Strategies for a phone system, and that the Committee then  
7 “donated” the system’s hardware, software, and “voter data” to RPV and its local district  
8 committees. *Id.* at 2-3. The Complainant asserts that the Respondents did not disclose this  
9 activity as in-kind contributions and that this activity created a system “by which the Republican  
10 Party Committees . . . could identify and target voters” during the Federal Election Activity  
11 (“FEA”) period 120 days prior to the June 12, 2012, primary election. *Id.*

12 The Complainant appears to base her assertions on comments she alleges to have heard at  
13 a meeting of the Colonial Heights (Virginia) Republican Committee (“CHRC”) on April 23,  
14 2012. During the meeting, the Complainant alleges that Amanda Chase, Political Director of  
15 Forbes for Congress, announced that the Forbes campaign was “donating a phone system” to  
16 CHRC and stated that it was “not for Congressman Forbes’ campaign. This is for the Party to  
17 use . . .” *Id.* at 3, 4.

18 In its Response, the Committee states that no in-kind activity took place between the  
19 Respondents, and that “the phones have been and continue to be exclusively used by the [Forbes]  
20 Committee for purposes of the Forbes for Congress campaign and are used solely at the Forbes  
21 for Congress campaign properties.” Forbes Resp. at 2. The Committee asserts that the phone  
22 system “was never donated to or borrowed by the Republican Party of Virginia or any other GOP  
23 committee,” and that none of the calling programs advocated for any candidate other than

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1 Congressman Forbes.<sup>2</sup> *Id.* The Forbes Response includes a sworn affidavit from Amanda  
2 Chase, who states that, during the aforementioned CHRC meeting, she “spoke . . . about a new  
3 phone system that had been acquired by the Forbes campaign for use by volunteers during the  
4 2012 election,” and that the “sole use of the phone system has been for the Forbes campaign and  
5 not for any other purpose.” *Id.* at Ex. 3.

6 The RPV Response states that the Forbes campaign did not donate a phone or calling  
7 system to any Republican Party committee, and that the Complainant may have “confused” a  
8 discussion of the Forbes phone system with that of the Republican Party. RPV Resp. at 1. RPV  
9 further states that both the Forbes campaign and RPV had their own separate phone calling  
10 programs in place, and that the Forbes Committee “operated its own call program with its own  
11 telephones.”<sup>3</sup> *Id.* at 2. Attached to the RPV Response is a sworn declaration from William  
12 Flanagan, a member of CHRC who purportedly was in attendance at the April 23, 2012, meeting.  
13 Flanagan declares that he recalls that Amanda Chase announced that the Forbes campaign  
14 “welcomed volunteers to come to the Forbes campaign headquarters . . . to make telephone calls  
15 on behalf of Randy Forbes on a telephone system the Forbes campaign had established.”  
16 Flanagan Decl. at 1. Flanagan also attests that he has “no recollection of Ms. Chase committing  
17 to provide a telephone system to Colonial Heights Republican Committee, or any other  
18 Republican Party committee, for party use.” *Id.* RPV further states that “[o]n information and  
19 belief, the Forbes campaign” did not donate or provide any telephone system to CHRC “or any  
20 other Republican Party committee for its own use.” RPV Resp. at 1-2.

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<sup>2</sup> The Forbes Response included telephone scripts that the Committee attests were used by volunteers and were related exclusively to supporting Randy Forbes' reelection. Forbes Resp. at Ex. 4-6.

<sup>3</sup> RPV explains that the Committee invited “Party” members to come to the Committee’s headquarters as volunteers to make pro-Forbes calls, but did not turn over the telephone system to the Respondents. RPV Resp. at 2. Separately, “Party members participated in a volunteer program to identify voters using telephones provided by the Republican Party of Virginia.” *Id.*

**B. Legal Analysis**

Political committees are required to report in-kind gifts of anything of value, including disbursements made to other political committees. *See* 2 U.S.C. §§ 431(9)(A)(i), 434(b)(4); 11 C.F.R. §§ 100.111(a), 100.111(e)(1), 104.3(b). According to disclosure reports filed with the Commission, the Committee disclosed disbursements to Innovative Campaign Strategies in April 2012, for “phone system for calling” and for “leasing phones for calling,” and made additional disbursements to Innovative Campaign Strategies throughout 2012.<sup>4</sup> The available information suggests that the Committee acquired and used its own telephone system in April 2012, and did not make an in-kind gift of its phone system, or provide for its use by other entities, including the Colonial Heights Republican Committee or any other Republican Party committee. The Committee and RPV both state that the Committee maintained exclusive use of its own telephone system. Additionally, the sworn affidavit from Amanda Chase and declaration from William Flanagan support the Respondents’ claim that the Complainant’s allegation that Ms. Chase’s announcement of a “donation” of a phone system from the Forbes Committee was possibly misinterpreted. Accordingly, the Commission finds no reason to believe that the Respondents violated the Act or Commission regulations with respect to the allegations in this matter.

<sup>4</sup> The Committee reported disbursements to Innovative Campaign Strategies on April 5, 2012, in the amount of \$4,215.00 for “phone system for calling,” and on April 27, 2012, in the amount of \$2,106.67 for “leasing phones for calling.” *See* Forbes for Congress 2012 12-Day Pre-Primary Report of Receipts and Disbursements at 93. The Committee reported five additional disbursements in 2012 disclosed as operating expenditures for “leasing phones for calling”: in the amount of \$2,106.67 on May 30, July 2, July 26, and August 31, and in the amount of \$2,106.65 on October 1. *See* Forbes for Congress 2012 July Quarterly Report of Receipts and Disbursements at 56; Forbes for Congress 2012 October Quarterly Report of Receipts and Disbursements at 197-98; Forbes for Congress 2012 12-Day Pre-General Report of Receipts and Disbursements at 64. The Committee also disclosed a disbursement of \$106.21 to Innovative Campaign Strategies on November 13, 2012, for “phone usage.” *See* Forbes for Congress 2012 30-Day Post-General Report of Receipts and Disbursements at 72.

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